

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

NINGDE AMPEREX TECHNOLOGY
LIMITED,

Plaintiff,

v.

ZHUHAI COSMX BATTERY CO., LTD.,

Defendant.

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Civil Action No.: 2:22-CV-232

JURY TRIAL DEMANDED

PATENT RULE 4-5(d) JOINT CLAIM CONSTRUCTION CHART

Pursuant to Rule 4-5(d) of the Local Patent Rules (“P.R.”) of the Eastern District of Texas and the Amended Docket Control Order governing this action (Dkt. No. 100), Plaintiff Ningde Amperex Technology Limited (“ATL”) and Defendant Zhuhai CosMX Battery Co., Ltd. (“CosMX”) hereby submit this Joint Claim Construction Chart regarding U.S. Patent Nos. 10,833,363 and 10,964,987.¹

The Parties propose that the claim construction hearing proceed term by term. To the extent the Court issues preliminary constructions before the hearing, the Parties propose that the party that disputes the preliminary construction argues first, followed by the party that agrees with the preliminary construction. Absent preliminary constructions, the Parties defer to the Court on who argues each term first.

¹ The parties agree no claim term in the remaining asserted patent, U.S. Patent No. 11,329,352 (the “’352 Patent”), requires construction.

Disputed Claims Terms within U.S. Patent No. 10,964,987	ATL's Proposed Construction	CosMX's Proposed Construction	Court's Construction
1. A separator, comprising: a porous substrate; and			
a porous layer arranged on a surface of the porous substrate, wherein the porous layer comprises inorganic particles and a binder, and <u>a ratio of Dv90 of the inorganic particles to the thickness of the porous layer is in a range from 0.3 to 3.0.</u>	<p>Dv90: [AGREED]</p> <p><u>a ratio of Dv90 of the inorganic particles to the thickness of the porous layer is in a range from 0.3 to 3.0:</u> Plain and ordinary meaning.</p>	<p>Dv90: [AGREED]</p> <p><u>a ratio of Dv90 of the inorganic particles to the thickness of the porous layer is in a range from 0.3 to 3.0:</u> Indefinite. Defendant asserts the '987 patent claims are indefinite because the '987 patent does not inform ordinary artisans how to measure Dv90 and the results can</p>	<p>Dv90: [Agreed Construction²]: “a particle size which reaches 90% of the cumulative volume from the side of small particle size in the granularity distribution on a volume basis.”</p> <p><u>a ratio of Dv90 of the inorganic particles to the thickness of the porous layer is in a range from 0.3 to 3.0:</u></p>

² Defendant contends that the following statement from the Joint Claim Construction Statement is still accurate: “The parties agree that the term “Dv90” as used in the '987 Patent means ‘a particle size which reaches 90% of the cumulative volume from the side of small particle size in the granularity distribution on a volume basis, but disagree whether this term and the claim phrase in which it appears are indefinite.” Dkt. 93 at 2. Plaintiff contends that Defendant failed to preserve any argument that the term “Dv90” on its own is indefinite because it did not make such an argument in its claim construction briefing and has already agreed to a construction for “Dv90.”

Disputed Claims Terms within U.S. Patent No. 10,964,987	ATL's Proposed Construction	CosMX's Proposed Construction	Court's Construction
		differ depending on how it is measured.	

Disputed Claims Terms within U.S. Patent No. 10,833,363	ATL's Proposed Construction	CosMX's Proposed Construction	Court's Construction
1. An electrolyte, comprising			
a <u>dinitrile compound</u> , a <u>trinitrile compound</u> , and propyl propionate,	<p><u>dinitrile compound:</u> Plain and ordinary meaning, no construction necessary.</p> <p>In the alternative, plain and ordinary meaning which is “a compound comprising two cyano groups.”</p> <p><u>trinitrile compound:</u> Plain and ordinary meaning, no construction necessary.</p> <p>In the alternative, plain and ordinary meaning which is “a compound comprising three cyano groups.”</p>	<p><u>dinitrile compound:</u> Plain and ordinary meaning, which is “a compound with two cyano groups”</p> <p><u>trinitrile compound:</u> Plain and ordinary meaning, which is “a compound with three cyano groups”</p>	<p><u>dinitrile compound:</u></p> <p><u>trinitrile compound:</u></p>

DATED: August 2, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on August 2, 2023, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Y. Leon Lin

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